

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT POWELL,	:
	: CIVIL ACTION NO. 3:17-CV-1662
Petitioner,	:
	: (JUDGE CONABOY)
v.	: (Magistrate Judge Schwab)
	:
SUPERINTENDENT, SCI-HOUTZDALE,	:
	:
Respondent.	:
	:

ORDER

AND NOW, THIS FIRST DAY OF NOVEMBER 2017, IT APPEARING TO THE COURT THAT:

1. Petitioner, an inmate at the State Correctional Institute-Houtzdale, Houtzdale, Pennsylvania, filed this habeas corpus action pursuant to 28 U.S.C. § 2254 on September 15, 2017 (Doc. 1);

2. The matter was assigned to United States Magistrate Judge Susan E. Schwab, who issued a Report and Recommendation, (Doc. 6), on October 10, 2017, recommending that the Court construe the instant petition as an application for leave to file a second or successive petition and that the Court transfer the petition to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1631;

3. No objections to the Magistrate Judge's Report and Recommendation were filed and the time for such filing has passed.

IT FURTHER APPEARING TO THE COURT THAT:

1. When a magistrate judge makes a finding or ruling on a motion or issue, his determination should become that of the court unless objections are filed. *See Thomas v. Arn*, 474 U.S. 150-53

(1985). Moreover, when no objections are filed, the district court is required only to review the record for "clear error" prior to accepting a magistrate judge's recommendation. See *Cruz v. Chater*, 990 F. Supp. 375-78 (M.D. Pa. 1998); *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998).

2. Our review of the record reveals no clear error in the Magistrate Judge's conclusion that, because the above-captioned matter is a second or successive petition and Petitioner has not obtained leave of the United States Court of Appeals for the Third Circuit to file the petition, this Court lacks jurisdiction to decide the petition and transfer to the Circuit Court is appropriate. (Doc. 6 at 1-6.)

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Magistrate Judge's Report and Recommendation, (Doc. 6), recommending that the Petitioner's petition be transferred, is ADOPTED;
2. Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. 1) is transferred to the United States Court of Appeals for the Third Circuit;
3. The Clerk of Court is directed to mark the case closed in this Court.

S/Richard P. Conaboy
RICHARD P. CONABOY
United States District Judge